STATE OF GEORGIA

ATTORNEY GENERAL'S STATEMENT

UNDERGROUND INJECTION CONTROL PROGRAM

I hereby certify, pursuant to my authority as Attorney General and in accordance with the provisions of Part C of the Safe Drinking Water Act (42 U.S.C. 300f, et seq., as amended) and 40 C.F.R. 123.5(a), that, in my opinion, the laws of the State of Georgia provide adequate authority to apply for, assume and carry out the program set forth in the Program Description submitted by the Georgia Environmental Protection Division. The specific authorities discussed herein are contained in lawfully enacted statutes or promulgated regulations which are in full force and effect. These authorities are discussed herein only insofar as they apply to "injection wells" which, according to applicable federal regulations, are wells into which "fluids" are being injected. 40 C.F.R. Part 122.3.

Although historically there have been very few injection wells in Georgia, the State has enacted a number of laws which provide regulatory authority with respect to injection wells. These laws include, but are not limited to, the Georgia Water Quality Control Act[1] ("WQCA") (Ga. Code Ann. § 17-501, et seq.), the Oil and Gas and Deep Drilling Act of 1975 ("OGDDA") (Ga. Code Ann. § 43-701, et seq.), the Groundwater Use Act ("GUA") (Ga. Code Ann. § 17-701, et seq.), the Hazardous Waste Management Act ("HWMA") (Ga. Code Ann. § 43-2901, et seq.), the Georgia Safe Drinking Water Act of 1977 ("SDWA") (Ga. Code Ann. § 17-1301, et seq.) and other laws.[2] Indeed, the State legislature has made it clear that the policy of this State is to secure the reduction and prevention of pollution and ensure the continued existence of present and future sources of safe water supplies. Ga. Code Ann. § 17-502, § 17-1301.

The WQCA, which is primarily relied upon in this Statement, serves the purpose of reducing and preventing "pollution," which is defined as:

> "[T]he man-made or man-induced alteration of the chemical physical, biological and radiological integrity of water." Ga. Code Ann. § 17-503(f).

---

[1] All statutory citations refer to the unofficial codification of the laws cited.

[2] See, e.g., the Solid Waste Management Act (Ga. Code Ann. § 43-1601, et seq.); the Georgia Radiation Control Act (Ga. Code Ann. § 88-1301, et seq.).

In the context of injection wells, implementation of this purpose would encompass regulation of all five classes of wells described in 40 C.F.R. Part 122.32. In particular, the WQCA regulates the use and construction of injection wells used for disposal [Ga. Code Ann. § 17-510(1) and (2)]. It also regulates the discharge of pollutants[3] into the waters of this State which result or will result from the erection, modification or operation of a facility. [Ga. Code Ann. § 77-510(3) and (4)].

The other laws mentioned above do not apply to injection wells as broadly as the WQCA does, but they warrant mentioning for they provide additional statutory authority for the State's regulation of injection wells. The OGDDA applies to wells drilled in the search for or production of oil, gas or other minerals, or water.[4] Ga. Code Ann. § 43-703(p). This includes Class II and Class III wells under 40 C.F.R. Part 122.32. The HWMA applies to facilities or wells used for the disposal of hazardous wastes and therefore regulates Class I and Class IV wells under 40 C.F.R. Part 122.32. The GUA applies to excavations, including wells, made for the purpose of locating, testing, or developing water resources, providing drainage and recharging of aquifers, among other things. It provides additional regulatory authority principally for Class V wells under 40 C.F.R. Part 122.32. The SDWA regulates drinking water wells and provides authority with respect to primary drinking water regulations.

At the present time, the State of Georgia exercises primary enforcement jurisdiction over three federally approved State programs which have some bearing on its application for State UIC Program primacy. These programs include a State NPDES Program, a Safe Drinking Water Program and a Hazardous Waste Management Program.

With respect to the specific regulatory requirements for State UIC Programs, a review of the WQCA and other relevant laws suggests that the following comments are appropriate [references to the "State" and the Georgia Environmental Protection Division ("EPD") will be used interchangeably]:

---

[3]The introductory language of Ga. Code Ann. § 17-503 indicates that "pollutant" refers to the substances identified in Ga. Code Ann. § 17-503(m) and any other substance which, in context, could be deemed included. In addition, the last sentence of Ga. Code Ann. § 17-503(m) suggests that the legislature intended substances other than those identified to be included in the definition of "pollutant."

[4]There are some jurisdictional limitations with respect to wells drilled for the production of minerals and water. Ga. Code Ann. § 43-704(b).

1. Prohibition of Unauthorized Injection

The State of Georgia prohibits unauthorized subsurface injections, consistent with 40 C.F.R. Part 122.33.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. § 17-510; DNR Rule 391-3-6-.06(14).

(b) The OGDDA, Ga. Code Ann. § 43-708(e).

(c) The HWMA, Ga. Code Ann. §§ 43-2907, 43-2906(6) and 43-2906(20).

(d) The GUA, Ga. Code Ann. § 17-1106.

Remarks of the Attorney General

As noted in the introductory comments of this Statement, the WQCA applies to all classes of wells under 40 C.F.R. Part 122.32. The OGDDA, HWMA and GUA apply to limited classes of wells as set out in the introductory comments. Considered individually and together, the authority cited above prohibits underground injections without a permit.

2. Prohibition of Endangering Drinking Water Sources

A. The State of Georgia has sufficient statutory and regulatory authority to prohibit endangerment of drinking water sources.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. §§ 17-502 and 17-510.

(b) The OGDDA, Ga. Code Ann. §§ 43-701, 43-704, 43-707 and 43-709.

(c) The HWMA, Ga. Code Ann. §§ 43-2902 and 43-2907.

(d) The GUA, Ga. Code Ann. § 17-1106.

(e) The SDWA, Ga. Code Ann. § 17-1301.

Remarks of the Attorney General

The WQCA, SDWA, HWMA and OGDDA require that the State exercise its authorities with proper regard for the preservation of the public's health and the prevention of pollution. Necessarily, this means that those Acts must be interpreted to prevent or prohibit the endangerment of drinking waters through well injections.

B. The State has sufficient rule-making authority to promulgate rules to prohibit injections which endanger drinking water sources consistent with State UIC Program requirements.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. §§ 17-505(b)(9) and 17-510.

(b) The GUA, Ga. Code Ann. §§ 17-1105(a)(4) and 17-1106.

(c) The HWMA, Ga. Code Ann. §§ 43-2905(l)(a) and 43-2907.

(d) The OGDDA, Ga. Code Ann. §§ 43-704(d) and 43-709.

Remarks of the Attorney General

Under the HWMA, WQCA, OGDDA and GUA, the State has authority to protect the public's health, protect the quality of the waters of the State, prevent the contamination of underground waters, prohibit the unauthorized disposals and regulate wells which involve significant use of underground waters. With this authority, the State is capable of implementing regulations consistent with the State UIC Program regulations to protect the waters of this State from endangerment. In addition, Georgia prohibits injections without a permit.

3. Prohibition of Movement of Fluid Into an Underground Source of Drinking Water (USDW)

A. The State meets the requirements of 40 C.F.R. Part 122.34(a)(1), which requires State UIC Programs to prohibit any authorization of an underground injection by permit or rule, that causes or allows movement of fluid into a USDW, for Class I, II or III wells.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. § 17-510.

(b) The OGDDA, Ga. Code Ann. § 43-707.

(c) The HWMA, Ga. Code Ann. §§ 43-2907 and 43-2906(7).

Remarks of the Attorney General

Georgia Code Ann. § 17-510 prohibits underground injections without a permit. Georgia Code Ann. § 17-510 also prohibits interlayer fluid flow in connection with the construction, modification and use of injection wells on the basis that such pollution "results" from such construction or usage.

B. State laws satisfy 40 C.F.R. Part 122.34(a)(2), which requires state programs not to allow the authorization or permitting of Class IV and Class V wells which cause or allow the movement of fluid containing any contaminant into underground sources of drinking water where such contaminant may cause a violation of the primary drinking water regulations.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. § 17-510.

(b) The SDWA, Ga. Code Ann. § 17-1304(2); DNR Rule 391-3-5-.46(2).

Remarks of the Attorney General

The State's responsibility to protect the public's health and the purity of the waters of this State provides regulatory authority to comply with 40 C.F.R. Part 122.34(a)(2). Additionally, the State's authority to promulgate regulations and meet any requirement of Public Law 93-523 and regulations issued pursuant thereto provides specific authority.

C. State laws satisfy 40 C.F.R. Part 122.34(b) and 122.44, which require state programs to provide for corrective actions when any Class I, II or III well causes the movement of fluids into underground sources of drinking water.

Citation of Authority

(a) The OGDDA, Ga. Code Ann. §§ 43-704(d), 43-710(a), (b).

(b) The WQCA, Ga. Code Ann. §§ 17-505(b)(9), 17-505(13) and 17-520.

(c) The SDWA, Ga. Code Ann. § 17-1311.

(d) The GUA, Ga. Code Ann. § 17-1109.

(e) The HWMA, Ga. Code Ann. § 43-2917.

Remarks of the Attorney General

The State of Georgia has ample specific authority to require corrective actions to protect the drinking waters of this State. The State's responsibility to administer the law consistent with protection of public health is added authority to require corrective actions in accordance with 40 C.F.R. Part 122.44.

D. State law is consistent with 40 C.F.R. Part 122.34(c) and (d) which require state programs to have authority to require corrective actions with respect to Class V wells.

Citation of Statutes and Rules

See Item C above.

Remarks of the Attorney General

See Item C above.

4. The State has sufficient authority to issue permits or promulgate rules for underground injections consistent

with United States Environmental Protection Agency (USEPA) requirements.

State Statutory and Regulatory Authority

(1) By Permit: WQCA, Ga. Code Ann. § 17-510; HWMA, Ga. Code Ann. § 43-2907; OGDDA, Ga. Code Ann. § 43-709; GUA, Ga. Code Ann. § 17-1106; SDWA, Ga. Code Ann. § 17-1307; DNR Rule 391-3-5-.02(ee).

(2) By Rule: See (1) above which indicates that Georgia is a permitting State.

(3) Area Permit: WQCA, Ga. Code Ann. § 17-510.

(4) Emergency Permits not applicable.

Remarks of the Attorney General

Georgia Code Ann. §§ 17-510(3) and (4) refer to the erection, modification, alteration and operation of "facilities." The permit required by this provision may be an area permit in the case of injection wells with EPD's approval.

5. Authority to Condition Authorized Injection Activities

The Federal Safe Drinking Water Act requires the state authorities to condition permits in accordance with conditions applicable to all permits.

The WQCA, which includes NPDES authority, satisfies the requirements of 40 C.F.R. Part 123.7(a).

6. Authority to Impose Compliance Evaluation Requirements

A. State law provides adequate and specific authority for entry in or onto a regulated site or facility for the purpose of inspections.

State Statutory and Regulatory Authority

(a) The WQCA, Ga. Code Ann. §§ 17-505(12) and 17-516.

(b) The OGDDA, Ga. Code Ann. § 43-704(d).

(c) The HWMA, Ga. Code Ann. §§ 43-2906(4) and 43-2911.

(d) The GUA, Ga. Code Ann. § 17-1110.

Remarks of the Attorney General

Georgia Code Ann. § 17-516 provides the State with inspection authority with respect to all classes of wells. The remaining authority cited provides the State with the authority to

perform inspections with respect to the classes of wells within the jurisdiction of the specific Acts.

B. State statutes and rules provide the authority for EPD to monitor facilities and require permittees to conduct monitoring in the manner prescribed by the Director of EPD.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. § 17-516.1; DNR Rule 391-3-6-.06(11).

(b) The OGDDA, Ga. Code Ann. §§ 43-704 and 43-707.

(c) The HWMA, Ga. Code Ann. § 43-2907(5).

(d) The GUA; DNR Rule 391-3-2-.08.

Remarks of the Attorney General

The EPD has general authority to require monitoring and submission of reports under the WQCA. This authority is supplemented by the authorities set out in the OGDDA, the HWMA and the GUA. Consequently, I conclude that the State has the authority to require monitoring consistent with State UIC Program requirements.

C. The State meets State UIC Program requirements for permittees and persons subject to the underground injection control regulations to keep all records and make all reports required by the Director.

State Statutory and Regulatory Authority

(a) The WQCA, Ga. Code Ann. § 17-516.1.

(b) The GUA, Ga. Code Ann. § 17-1105(a)(1).

(c) The OGDDA, Ga. Code Ann. § 43-707(b), (o).

Remarks of the Attorney General

The EPD will have further authority to inspect under the hazardous waste management regulations when such regulations become final. In any case, however, irrespective of the source of authority, the Georgia Environmental Protection Division, as the State, will be the inspecting authority.

7. Authority for Enforcement Requirements

A. The EPD has authority to immediately restrain any person from engaging in any unauthorized injection that is endangering or causing damage to public health or the environment.

(1) The WQCA, Ga. Code Ann. §§ 17-521 and 17-505(16); DNR Rule 391-3-6-.05(4).

(2) The GUA, Ga. Code Ann. §§ 17-1108 and 17-1109.

(3) The OGDDA, Ga. Code Ann. § 43-710(b), (c).

(4) The HWMA, Ga. Code Ann. § 43-2917.

Remarks of the Attorney General

Under the above-cited authority, EPD has ample enforcement authority to immediately restrain persons as required for State UIC Programs.

B. The EPD has authority to sue in the courts of this State to enjoin threatened or continued violations of requirements as set forth in State UIC Programs.

Citation of Statutes and Rules

See Item A above.

Remarks of the Attorney General

See Item A above.

C. The laws of the State of Georgia provide maximum and minimum civil and criminal penalties for unauthorized injections.

Citation of Statutes and Rules

(a) The WQCA, Ga. Code Ann. §§ 17-521.2 and 17-9901.

(b) The OGDDA, Ga. Code Ann. § 43-710(d).

(c) The HWMA, Ga. Code Ann. §§ 43-2916 and 43-9917.

Remarks of the Attorney General

Georgia law provides the following relevant civil penalties: WQCA, penalty not to exceed $10,000 per day of violation; HWMA, penalty not to exceed $25,000 per day of violation; and OGDDA, penalty not less than $50.00 nor more than $10,000 per day of violation. Georgia law also provides the following relevant criminal penalties: WQCA, fine not less than $2,500 per day nor more than $25,000 per day or imprisonment for not more than one year, or both, for a first violation (for subsequent convictions, fines are not to exceed $50,000 per day or two years imprisonment, or both); HWMA, penalties are the same as WQCA, except HWMA does not establish a minimum penalty for a first conviction. Within these limits, the State has discretion to adopt an enforcement policy consistent with State UIC Program requirements.

D. The EPD has authority to assess or seek civil penalties that are appropriate to the violation.

State Statutory and Regulatory Authority

See Item C above.

Remarks of the Attorney General

In determining an appropriate civil penalty, the EPD will consider, among other things, the nature of the violation, the duration of the violation, the hazard created by the violation, the willfulness of the violation, the foreseeability of the violation, the environmental and health impact of the violation and whether the violation was corrected when discovered. The Director of EPD has discretion to employ these factors in determining what civil penalty to pursue and the hearing officer of the Georgia Department of Natural Resources has authority to consider such factors and others in assessing a penalty.

E. Public Participation - The laws of the State of Georgia allow for the public participation in EPD processes.

Citation of Statutory and Regulatory Authority

(a) The WQCA, Ga. Code Ann. § 17-505(b)(7), (8); DNR Rule 391-3-6-.06(7).

(b) The HWMA, Ga. Code Ann. § 43-2906(7), (8).

(c) Section 17, Executive Reorganization Act of 1972, Ga. Code Ann. § 40-3519(a).

(d) Georgia Administrative Procedure Act, Ga. Code Ann. §§ 3A-114, 3A-115.

(e) Georgia Civil Practice Act, Ga. Code Ann. § 81A-124.

(f) Law of Nuisance, Ga. Code Ann. Chaps. 72-1 and 72-2.

Remarks of the Attorney General

The above and foregoing authority authorizes the Director of EPD to conduct such public hearings as are required by the HWMA, the WQCA and as he deems necessary. Section 17(a) of the Executive Reorganization Act confers a right of participation upon all "aggrieved persons" and the Administrative Procedure Act provides procedures for public participation. In addition, Ga. Code Ann. § 81A-124 provides for intervention in court proceedings. These hearings are in addition to any hearing which an individual may be entitled to by virtue of initiating a private action under Ga. Code Ann. Chaps. 72-1 and 72-2 or any hearing provided in connection with a mandamus action.

8. Authority for Public Participation in Permit Processing

The WQCA, GUA, HWMA and OGDDA provide for adequate public involvement and participation in permit processing, including draft permits, public comments, public hearings and response to comments on the final permit.

State Statutory and Regulatory Authority

See Item E of Number 7 above.

Remarks of the Attorney General

See Item E of Number 7 above.

9. Authority to Apply Technical Criteria and Standards

The EPD has authority to apply technical criteria for the control of underground injection consistent with State UIC Program requirements.

Statutory and Regulatory Authority

(a) The WQCA, Ga. Code Ann. §§ 17-505(b)(9) and 17-510(2), (3).

(b) The OGDDA, Ga. Code Ann. § 43-707.

(c) The HWMA, Ga. Code Ann. § 43-2906(1).

(d) DNR Rule 391-3-2-.04.

Remarks of the Attorney General

Pursuant to Ga. Code Ann. § 17-510(2), the construction, installation or modification of any system for disposal of any substance which causes or tends to cause pollution is prohibited without a permit. Although an injection may not be intended as a disposal, as a practical matter, the injection of a fluid into a well will result in some disposal. Additionally, Ga. Code Ann. § 17-510(3) requires any person who desires to erect, modify, alter or commence operation of a facility of any type which results or will result in the discharge of pollutants from a point source into the waters of this State [as defined in Ga. Code Ann. § 17-503(d)] to obtain a permit to make such discharge from EPD. In such cases, EPD may, through permit conditions, apply technical criteria consistent with State UIC Program requirements.

10. Classification of Injection Wells

Presently, Georgia does not provide for five categories of wells as set out in 40 C.F.R. Part 122.32, however, nothing prevents the State from promulgating such classifications or in following enforcement policies consistent with federal policies based upon such classifications. To the extent that wells are classified according to their use, there is, in this State, a categorization of wells by statute which parallels 40 C.F.R. Part 122.32. Class I and Class IV wells are subject to regulation under the HWMA since such wells would be hazardous waste facilities within the meaning of Ga. Code Ann. § 43-2904(10). Class V wells would be subject to regulation under the GUA. Class II and Class III wells would be subject to regulation under the OGDDA. Although these laws do not refer to classes of wells, they do provide an additional basis upon which the Environmental Protection Division may focus its consideration on wells according to their usage.

Department of Natural Resources Rule 391-3-6-.03(4) is an excellent example of the State's authority to promulgate classifications when the Board of Natural Resources deems such classifications to be meritorious.

11. Elimination of Certain Class IV Wells

The State of Georgia has no need to eliminate Class IV wells as none are known to exist in the State. In addition, Class IV wells have to be permitted under the HWMA as hazardous waste facilities. Ga. Code Ann. § 43-2904(10). The EPD's responsibility under the WQCA to protect the public health and the HWMA and various other laws would, as a practical matter, preclude any new Class IV wells, given the possibility of leaching and the subsurface geological characteristics of this State.

12. Identify Aquifers that are Underground Sources of Drinking Water and Exempt Certain Aquifers

The EPD has the authority to identify aquifers and water resources. DNR Rule 391-3-2-.12(1).

According to the program which EPD has submitted to the USEPA, there will be no exempted aquifers under its program. Accordingly, it is unnecessary to provide for hearings in connection with such exemptions.

13. Authority Over Federal Agencies and Persons Operating on Federally Owned or Leased Property

The authority of the State of Georgia to regulate well injections, as discussed in this Statement, extends to federally owned lands within the State of Georgia in the

absence of a contrary federal claim. Fort Leavenworth Railroad Company v. Lowe, 114 U.S. 525 (1884). Such a claim is not likely in light of 42 U.S.C.A. § 300j-6(a).

Additionally, the WQCA, HWMA and GUA apply to persons in the broad sense of the term including federal agencies.

Statutory and Regulatory Authority

(a) The WQCA, Ga. Code Ann. § 17-503(e).

(b) DNR Rule 391-3-6-.08(2)(ii).

(c) The GUA, Ga. Code Ann. § 17-1103(e).

(d) The HWMA, Ga. Code Ann. § 43-2904(13).

14. State Authority over Indian Lands

There are no Indian lands within the State of Georgia.

15. Authority to Revise State Underground Injection Control Programs

The EPD has authority to revise its State Underground Injection Control Program through the Board of Natural Resources. This would be done through the promulgation of rules as deemed necessary to accomplish desired revisions. Such revisions could also be made in connection with EPD's cooperation with federal agencies.

16. Authority to Make and Keep Records and Make Reports on Its Program Activities, All as Prescribed by the Environmental Protection Agency

The EPD may keep and maintain such records as are necessary to the administration of the WQCA. In addition, EPD may make and keep records and reports pursuant to agreement with the United States Environmental Protection Agency. Ga. Code Ann. § 17-505(a)(2) and (3).

17. Confidential Information

The EPD has authority with respect to the sharing of information. Inasmuch as 40 C.F.R. Part 123.8(c) and Part 123.10 apply to NPDES programs (which derive their authority from the State) and the State of Georgia is an NPDES Approved State, it necessarily has the requisite authority. Indeed, the EPD has specific statutory authority with respect to confidential information pertaining to Class I, II, III and IV wells. Ga. Code Ann. §§ 43-2919; 43-707(o), (p).

To the extent that EPD is required to comply with various procedures, it is authorized to do so pursuant to its authority to cooperate with the government of the United States.

In addition to the specific statutory authority set out in this Statement, the State of Georgia is empowered to "Perform any and all acts necessary to carry out the purposes of [the WQCA] and the Federal Water Pollution Control Act, as amended, relating to this State's participation in the National Pollutant Discharge Elimination System established under that Act." Ga. Code Ann. § 17-505(b)(16).

Michael J. Bowers

MICHAEL J. BOWERS
Attorney General

February 4, 1982.

Prepared by:

Isaac Byrd

ISAAC BYRD
Assistant Attorney General

AMENDED STATEMENT RELATING TO AUTHORITY OF THE STATE OF GEORGIA TO IMPLEMENT AN UNDERGROUND INJECTION CONTROL PROGRAM

On February 4, 1982, this office prepared an Attorney General's Statement pursuant to the requirements of 40 C.F.R. § 123.5 certifying that the State of Georgia had statutory authority to implement an Underground Injection Control (UIC) Program in accordance with certain regulations contained in 40 C.F.R. Parts 122, 123 and 124. After a review of that Statement by the United States Environmental Protection Agency (USEPA) and subsequent correspondence between my staff and USEPA, it appears that there are four basic issues as to which USEPA desires clarification. These issues are:

(1) Whether O.C.G.A.[1] §§ 12-5-29 and 30 provide the State of Georgia with the statutory authority to regulate all well injections;

(2) Whether, in view of the apparent exclusion contained in O.C.G.A. § 12-5-22(9), a UIC Program which regulates injection wells used in connection with oil and gas production can be implemented in Georgia;

(3) Whether Georgia has statutory authority to protect "underground sources of drinking water" as that term is defined in 40 C.F.R. § 122.3; and

(4) Whether Georgia may regulate injection wells by rule.

This Amended Statement is to provide further discussion and clarification of these issues.

I. Georgia Has Statutory Authority To Regulate All Well Injections.

The Georgia Water Quality Control Act (WQCA) is a comprehensive Act which has as its main purpose the prevention of pollution and the protection of the water supply available to the citizens of the State of Georgia.[2] The intent of the General Assembly to enact a law which applied broadly to the regulation of the State's water resources is evident from the terms of the WQCA. Indeed, the WQCA defines pollution as:

> "The manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water."

---

[1] O.C.G.A. refers to the Official Code of Georgia Annotated.

[2] O.C.G.A. § 12-5-21.

Under this definition, every possible change in the quality of water is pollution. The breadth with which the WQCA is to apply is also evidenced by its definition of "other waste,"[3] which states:

> "Other waste means liquid, gaseous, or solid substances, except industrial waste and sewage, which may cause or tend to cause pollution of any waters of the State." O.C.G.A. § 12-5-22(6).

This definition does not attempt to list substances which would constitute "other waste" or to define the term in relationship to value or intent. Rather, "other waste" is defined in terms of every known form of matter. This certainly is inclusive and consistent with an intent to provide broad authority to protect the waters of the State.

That the WQCA applies to well injections cannot be seriously questioned. First, the WQCA defines "waters of the State" as including wells and prohibits the use of such waters (including wells) for disposal of sewage, industrial waste and other waste, unless in compliance with the WQCA. O.C.G.A. § 12-5-29(a). Since, practically speaking, some disposal of injected fluid will result whenever there is a well injection, O.C.G.A. § 12-5-29(a) may be said to apply to the injection of all substances, whether solid, liquid or gas. Second, the WQCA requires that:

> "Any person who owns or operates a facility of any type or who desires to erect, modify, alter, or commence operation of a facility of any type which results or will result in the discharge of pollutants from a point source into the waters of the State shall obtain from the Director a permit to make such discharge." O.C.G.A. § 12-5-30(a).

As waters of the State are defined as including wells, any discharge or injection of a "pollutant" into a well requires a permit. Third, since the WQCA specifies that a well is a point source under O.C.G.A. § 12-5-22(8), any discharge from a well into waters of the State would be subject to O.C.G.A. § 12-5-30(a).

The question of whether the WQCA requires a permit for all well injections may be answered by reference to O.C.G.A. §§ 12-5-22, -29 and -30 and case law construing certain provisions of the Federal Water Pollution Control Act [the "Clean Water Act" (CWA)], 33 U.S.C.A. § 1251, et seq., which are similar to WQCA provisions. As noted above, O.C.G.A. § 12-5-29(a) applies to the injection of all substances into wells subject to compliance with WQCA provisions. Also, as

---

[3]The disposition of "other waste" into waters of the State is regulated by O.C.G.A. § 12-5-29(a).

noted above, O.C.G.A. § 12-5-30(a) requires a permit for (a) discharges (b) of pollutants (c) from point sources (d) into waters of the State.

The term "discharge" is not defined by the WQCA. However, the CWA contains a definition of the term which is helpful in construing the meaning of "discharge" under the WQCA. The CWA defines "discharge" or "discharge of a pollutant" in pertinent part as:

> "Any addition of any pollutant to navigable water from any point source." 33 U.S.C.A. § 1362(12), (16).

A similar definition for "discharge" under the WQCA (which would refer to waters of the State instead of navigable waters) would be appropriate since under the CWA, the Administrator of USEPA had to approve Georgia's permit program under the WQCA. See Exxon v. Train, 554 F.2d 1310, 1324-26 (5th Cir. 1977). Defined thusly, "discharge" would be broad enough to encompass well injections as well as fluid movement into waters of the State which may result from well injections.

The term "pollutant" is defined as:

> "Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, emissions, chemical waste, biological material, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial waste, municipal waste, agricultural waste discharged into waters of the State. It does not mean (1) sewage from vessels or (2) water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well, used either to facilitate production or for disposal purpose, is approved by the appropriate authorities of this State, and if such authorities determine that such injection or disposal will not result in degradation of ground water or surface water resources."

This definition is almost identical to the CWA definition in 33 U.S.C.A. § 1362(6), the difference between the definitions being that the WQCA does not contain the apparently limiting language, "except as otherwise provided," of 33 U.S.C.A. § 1362(6).

Referring to authority construing 33 U.S.C.A. § 1362(6), it seems clear that "pollutant" is not limited to the substances set out in 33 U.S.C.A. § 1362(6) but includes other substances. See, U.S. Steel Corp. v. USEPA, 556 F.2d 822 (7th Cir. 1977); United States v. Hamel, 551 F.2d 107 (6th Cir. 1977). Since 33 U.S.C.A. § 1362(6) and O.C.G.A. § 12-

5-22(9) are so similar and serve similar purposes, this authority would seem equally applicable to O.C.G.A. § 12-5-22(9). In U.S. Steel Corp. v. USEPA, supra, the Court applied the canon expressio unius est exclusio alterius to the language quoted immediately above and concluded that "water, gas or other material" are "pollutants" when injected into wells under any circumstances other than proper use in connection with oil and gas production. The Court supported its ruling by referring to the legislative history of the provision. In another case, United States v. Hamel, supra, the Court held that gasoline was a "pollutant" even though not listed in the definition of "pollutants." The Court was influenced by the definition of "pollution" and the legislative history of the CWA. These cases demonstrate, rather strongly, that any substance may be a "pollutant" when injected into a well unless statutorily excepted for oil and gas production.

The term "point source" is defined as including "wells." It follows that well discharges are point source discharges. To constitute a point source discharge, however, the discharge need not come directly from the well. As Sierra Club v. Abston Const. Co., 620 F.2d 41 (5th Cir. 1980) points out:

> "Gravity flow, resulting in a discharge into . . . water, may be part of a point source if . . . [man] at least initially collected or channeled the [polluting] water and other materials." Id. at 45.

In cases of well injection, there can be no doubt that the injected fluid is collected or channeled. Thus, for example, the subsurface injection of fluid to facilitate mining would create a point source. Since O.C.G.A. § 12-5-30(a) applies to a facility which "results or will result" in the discharge of a pollutant into waters of the State, injection wells should be permitted.

II. The State of Georgia ~~Has Statutory~~ Authority To Implement A UIC Program Which Applies To Injection Wells Used In Connection With Oil and Gas Production.

The second sentence of O.C.G.A. § 12-5-22(9), which defines "pollutant," states in pertinent part:

> "[Pollutant] does not mean . . . water, gas or other material which is injected into a well to facilitate production of oil or gas or water derived in association with oil or gas production and disposed of in a well, if the well, used either to facilitate production or for disposal purposes, is approved by the appropriate authorities, and if such authorities determine that such injection or disposal will not result in degradation of ground water or surface water resources."

As this language indicates, the WQCA applies to injection wells used in connection with oil and gas production unless an appropriate State agency has (1) approved such injection on the basis that (2) the quality of subsurface waters would not be degraded by the injection.

In 1974, when the language quoted immediately above first appeared in Georgia law, Georgia had no oil and gas production industry and there was no State agency with authority to approve well injections or find that such injections would not degrade subsurface waters. Consequently, any well injections which might have occurred in connection with the production of oil or gas would have been regulated by the WQCA.

In 1975, the Georgia General Assembly enacted the Oil and Gas and Deep Drilling Act of 1975, O.C.G.A. §§ 12-4-40, et seq., but provided that:

> "It is not the purpose of this part, and no provision of this part shall be construed, to repeal, supercede, or preempt any of the functions, powers, authority, duties, or responsibilities assigned to the Environmental Protection Division of the Department. . . ." O.C.G.A. § 12-4-51.

By virtue of this provision, the General Assembly left in tact EPD's full jurisdiction over well injections made in connection with the production of oil and gas. Thus, the provisions of the WQCA apply to injection wells used in connection with oil and gas production. Additionally, since EPD is the regulatory agency for the Oil and Gas and Deep Drilling Act of 1975, it has plenary authority to regulate injections which are made in connection with oil and gas production.

III. Georgia Has Statutory Authority To Protect Underground Sources of Drinking Water.

Under the WQCA, Georgia has authority to protect:

> "All . . . bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation."

According to 40 C.F.R. § 122.3, an "underground source of drinking water" is a non-exempt aquifer or portion thereof. The WQCA definition certainly includes aquifers or geological formations containing waters in usable quantities. The Clean Water Act contemplates such State authority as a condition of NPDES approval. As the Court noted in U.S. Steel Corp. v. USEPA, supra, at 853:

"The Senate Report which accompanied S.2770 . . . explains that . . . state regulation under section 402 [of the CWA] is required 'to protect ground waters'. . . ."

Thus, Georgia, as an NPDES State which has authority to protect ground waters, has authority to protect underground sources of drinking water.

IV. Under Georgia Law, A Person Injecting Fluids Into A Well Must Obtain A Permit.

As discussed above, O.C.G.A. § 12-5-30(a) requires a permit whenever pollutants are injected into a well. There does not appear to be an exception to this requirement set out in the WQCA. However, under § 12-5-23(13), the State can:

"Establish or revise through rules and regulations of the Board of Natural Resources or permit conditions, or both, effluent limitations based upon an assessment of technology and processes unrelated to the quality of the receiving waters of this State."

Under the above language, it is possible that Georgia could set certain effluent limitations by regulation and thereby make obtaining a permit a fairly simple task. However, such authority does not confer the authority to dispense with a permit requirement.

In view of the foregoing, I conclude that Georgia has full authority to operate a UIC Program under its Water Quality Control Act.

Michael J. Bowers

MICHAEL J. BOWERS
Attorney General

MJB/gj

4-22-85

The Department of Law
State of Georgia
Atlanta

MICHAEL J. BOWERS
ATTORNEY GENERAL

30334

132 STATE JUDICIAL BUILDING
TELEPHONE 656-3300

July 13, 1983

Mr. Todd Gulick, Esq.
Office of General Counsel
Water and Solid Waste Division (A131)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

RE: State UIC Program

Dear Mr. Gulick:

By letter dated July 7, 1983, you have requested that the State of Georgia provide further discussion of the question whether the Georgia Water Quality Control Act (WQCA) regulates injections into drinking water wells only or wells in general. In our view, the WQCA applies to wells in general.

In support of this view, we rely upon the following considerations. First, O.C.G.A. § 12-5-22(13) defines "waters" or "waters of the State" as including "wells."[1] The definition contains no reference to drinking water wells. Second, the WQCA has been interpreted and implemented in a manner consistent with our understanding that it applies to wells in general. Under Department of Natural Resources Rule 391-3-6-.06(14),

> "If the [water quality] permit proposes to discharge to a well or subsurface water, the Director shall specify additional terms and conditions which shall (a) prohibit the proposed disposal, or (b) control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare. Any permit issued for the disposal of pollutants into wells shall comply with Federal Regulations and applicable State laws."

Third, Georgia is an NPDES approved State. One of the conditions for such approval is authority to regulate disposal into wells without regard to whether they are drinking water wells or other wells. United States Environmental Protection Agency Comment, 45 Fed. Reg. 33468.

---

[1] "Waters" or "waters of the State" are also defined to include "drainage systems" which are not necessarily water containing,

In our view, the regulation of wells under the WQCA is entirely proper. In general, wells bear such a relationship to underground waters that every injection into them represents a potentially direct or indirect injection into water. Indeed, in any location injections into wells may enter subsurface waters through cracks and porous layers in the subsurface, if not directly. Congress appears to have recognized the truth of this statement when it, as a national water protection measure, required that NPDES States regulate disposal into wells without regard to whether they were drinking water wells or not. Id.

As noted above, Georgia is an NPDES State and therefore the WQCA (law upon which Georgia's NPDES approval is based) should be interpreted as applying to wells in general as the Clean Water Act does. Additionally, since the WQCA requires the implementation of a water quality program which considers both present and future water needs of the State, jurisdiction over well injections on the basis of their potential effect upon the future availability of underground water resources would be a proper consideration within the terms of the WQCA.

In view of the foregoing, we conclude that the interpretation of "waters" or "waters of the State" as including wells in general is entirely proper and reasonable.

Sincerely,

ROBERT S. BOMAR
Senior Assistant Attorney General

RSB/gj